

**PT 04-32**

**Tax Type: Property Tax**

**Issue: Government Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**VILLAGE OF  
BENSENVILLE,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 03-PT-0082  
(03-22-0193)  
P.I.N.: 03-23-309-003  
03-23-309-004**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Peter W. Ostling, attorney at law, behalf of the Village of Bensenville (the “Applicant” or the “Village”); Mr. Robert Rybica, Assistant State’s Attorney for the County of DuPage, on behalf of the DuPage County Board of Review (the “Board”); Mr. George Foster, Special Assistant Attorney General, on behalf of the Illinois Department Of Revenue (the “Department”).

**SYNOPSIS:** This proceeding raises the issue of whether real estate identified by DuPage County Parcel Index Numbers 03-23-309-003 and 03-23-309-004 (collectively the “subject property”) qualify for exemption from 2003 real estate taxes under 35 ILCS 200/15-60 and/or 35 ILCS 200/15-75. The underlying controversy arise as follows:

The Village filed a Petition for Tax Exemption with the Board, which, after reviewing the Petition, recommended to the Department that the requested exemption be denied. Dept. Group Ex. No. 1. The Department accepted the Board’s recommendation by means of an initial determination, dated October 9, 2003, finding that the subject property is not in exempt ownership and not in exempt use. *Id.*

The Village filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing, at which the Department and the Board also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination in this matter be affirmed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located in Bensenville, IL and improved with a with a 2 story residence. *Id.*
4. The Village obtained legal title to the subject property pursuant to the terms of a warranty deed dated March 12, 2003. Applicant Ex. No. 1.
5. The deed contained the following clause whereby the Village's grantor and predecessor in title, a private individual, expressly reserved a life estate in the subject property for himself. *Id.*
6. A rider to the deed (the "rider") states that the life estate is subject to the following terms and conditions:
  - A. The grantor, Kenneth R. Caron, "shall have and enjoy exclusive use and control of the [subject] property until the expiration of the life estate" granted under terms of the deed;

- B. The grantor shall maintain the subject property, including all structures and fixtures thereon, in substantially the same conditions as those existing on the date when the grantor executed the rider;
- C. The Village shall petition for exemption of the subject property from real estate taxation. In the event that the petition and appeal thereof is denied, the grantor shall pay all real estate taxes levied against the subject property;
- D. The grantor shall keep the property free from any liens, levies, fines, or violations of any law or ordinance;
- E. The Grantor shall maintain homeowner's insurance on the property in an amount not less than the replacement cost of the structures. Said insurance policy shall name the Village as an additional insured party.
- F. The term of the life estate is personal to the grantor, Mr. Caron;
- G. The grantor shall not lease, sublet, or otherwise convey his life estate to any other party; and,
- H. The grantor shall not conduct any business operation on the subject property;
- I. Possession shall remain with the grantor during his life estate, subject to a shorter period if the grantor no longer resides at the property;
- J. Upon termination of the life estate or termination of possession, the grantor or his authorized legal representative(s) shall, within 30 days, remove all of the grantor's personal property from the subject property. All other property, including but not limited to fixtures, shall remain on the subject property.

*Id.*

**CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional mandate, the General Assembly enacted Sections 15-60 and 15-75 of the Property Tax Code (35 **ILCS** 200/1-1, 15-105(b)), which provide for exemption of the following:

**200/15-60. Taxing District Property**

§ 15-50. Taxing district property. All property belonging to any county, village or city, used exclusively for maintenance of the poor is exempt [from real estate taxation], as is all property owned by a taxing district<sup>[1]</sup> that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.

Also exempt are:

- (a) all swamp or overflowed lands belonging to any county;
- (b) all public buildings belonging to any county, township, city or incorporated town, with the ground on which the buildings are erected;
- (c) all property owned by any city or village located within its incorporated limits;
- (d) all property owned by any city or village located outside its corporate limits but within the same county when used as a tuberculosis sanitarium, farm colony in connection with a house of correction, or nursery, garden, or farm, for the growing of shrubs, trees, flowers, vegetables, and plants for use in beautifying, maintaining, and operating playgrounds, parks, parkways, public grounds, buildings, and

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<sup>1</sup>. Section 1-150 of the Code defines the term “taxing district” as “any unit of local government, school district or community college district with power to levy taxes.” 35 **ILCS** 200/1-150.

institutions owned or controlled by the city or village; and,

- (e) all property owned by a township and operated as senior citizen housing under Sections 35-50 through 35-50.6 of the Township Code [60 ILCS 1/35-50 to 1/35-50.6].

35 ILCS 200/15-60.

## **200/15-75. Municipal Corporations**

§ 15-75. Municipal corporations. All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt.

35 ILCS 200/15-75.

Property tax exemptions are inherently injurious to public funds, as they impose lost revenue costs on taxing bodies. Accordingly, statutes conferring such exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

The precise debatable question at issue herein is whether the Village or the life tenant, Mr. Caron, qualifies as the “owner” of the subject property. This issue arises because Sections 15-60 and 15-75 impose very specific exempt ownership requirements through use of the words such as “owned by” and “belonging to.” 35 ILCS 200/15-60, 15-75.

There is presently no dispute that the Village, itself, is a member of the class of entities that the General Assembly intended to benefit through enactment Sections 15-60 and 15-75. However, the question of whether the Village’s status as titled owner of the subject property is legally sufficient to prove that it qualifies as the “owner” of this property for

present purposes is very much in dispute. For the following reasons, I conclude that it is not.

The Department and the Board correctly point out that the “owner” of real estate for property tax purposes is not necessarily synonymous with the entity or individual that holds legal title thereto. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979)); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996)). Rather, the “owner” of real estate is the entity that, in practical terms, exercises the right to control the property and the right to enjoy its benefits. *Id.*

Courts employ multiple factors to determine which entity exercises these rights. For purposes of this particular case, the most important of these factors are whether the written instrument that creates and governs the respective property interests: (1) makes the purported “owner” liable to pay any property taxes assessed against the property (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 946 (2<sup>nd</sup> Dist. 1987); Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 61 (1978)); (2) enables that “owner” to receive any tax benefits that the instrument provides (Wheaton College, *supra* at 948); and, (3) authorizes the “owner” to fully and freely alienate, transfer or (in an appropriate case) sublease the property throughout the term of the instrument (Wheaton College, *supra* at 948).

The warranty deed and attached rider whereby the Village obtained its interest in the subject property clearly states that the life tenant, Mr. Caron, is not at liberty to alienate or otherwise transfer the subject property throughout the duration of his life estate. Applicant Ex. No. 1. It further provides that Mr. Caron is solely responsible for paying all real estate taxes levied against the subject property. *Id.* Consequently, granting

the exemption that the Village now seeks would not allow the Village, itself, to obtain the tax savings that the General Assembly intended for it to receive. Rather, it would effectively relieve a private individual, Mr. Caron, of his otherwise lawful obligation to pay real estate taxes.

In addition, the remaining terms and conditions of the life estate clearly demonstrate that it is Mr. Caron, and not the applicant-Village, that retains control over the subject property and enjoys its benefits. For instance, Mr. Caron enjoys “exclusive use and control of the [subject] property” throughout the duration of his life estate. Applicant Ex. No. 1. Furthermore, because the life estate is personal to Mr. Caron, he can continue to enjoy his “exclusive use and control” of this property, without any interference from the Village, for so long as he desires. Therefore, from a practical standpoint, it is all but factually and legally impossible for the Village to exercise any rights of direction and control over the subject property so long as the life estate remains in effect.

Based on the above, the overall conclusion I must reach is that the subject property does not qualify for exemption from 2003 real estate taxes under Sections 15-60 and/or 15-75 of the Property Tax Code because the indicia of ownership rest squarely with a private individual whom the General Assembly did not intend to benefit through enactment of these provisions. Therefore, the Department’s initial determination in this matter should be affirmed.

WHEREFORE, for all the foregoing reasons, it is my recommendation that real estate identified by DuPage County Parcel Index Numbers 03-23-309-003 and 03-23-309-004 not be exempt from 2003 real estate taxes.

Date: 9/7/04

Alan I. Marcus  
Administrative Law Judge